



**Campaign and Party Finance in Ukraine: Dilemmas of Regulation in the Context of
Weakly Institutionalized Political and Legal Systems**

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This paper analyzes the various aspects of campaign and party finance in Ukraine in the light of the 2002 parliamentary elections' experiences. The discussion evolves around three interrelated issues: regulation of campaign and party finance, enforcement of regulation rules, and state support for campaign and party funding. The first section of the paper focuses on the limitations of the current legislation. The second section discusses the role of various enforcement agencies and the effectiveness of enforcement mechanisms. The last section addresses the highly controversial issue of public funding in the Ukrainian context.

Regulatory norms

The October 2001 Law "On Election of the People's Deputies of Ukraine" and the April 2001 Law "On Political Parties" served as key elements of legal framework which regulated the 2002 parliamentary campaign. The very recent origins of both laws and the fact that each of three parliamentary elections since 1991 were conducted under the different parliamentary election law indicate that issues surrounding campaign organization and party functioning have not yet been settled in Ukraine. At the same time, the changes in legal norms regulating campaign and party finance over the first post-communist decade reflected the growing sophistication of country's political practices.

From the comparative point of view, Ukrainian legal regulations of campaign and party finance are relatively robust. For example, campaign finance disclosure mechanisms, one of the key regulatory instruments in the area of political finance, are

incorporated in the 2001 parliamentary election law. As a recent survey of disclosure mechanisms in 118 democracies indicates, Ukraine falls in the top 20-30% of countries with relatively sophisticated financial disclosure rules.¹ Disclosure rules constitute, however, only one of a number of regulations needed to arrive at more transparent system of campaign and party finance.

Other regulatory restrictions, which are central to political finance regulation, include contribution, expenditure, and time limits; prohibitions on funds from certain organizations and individuals; and bans on various types of in-kind contributions. The Ukrainian legislation contains various clauses dealing with these regulatory restraints. The effects of both disclosure rules and other types of regulatory restraints on the behavior of the various participants of political process have to be systematically re-assessed if the regulatory framework is to be effective.

The 2002 parliamentary campaign highlighted a number of problems regarding both the character of individual regulatory restraints envisioned by the Ukrainian legislation and the ways these regulations are combined to form a regulatory framework for political finance. The most serious issues were raised about expenditure limits, bans on organizational contributions, and inadequacy of legal mechanisms of controlling in-kind contributions.

¹ Michael Pinto-Duschinsky's study cited in "Money and Politics Handbook: A Guide to Increasing Transparency in Emerging Democracies" (USAID's Office of Democracy and Governance Handout distributed at the Institute for Public Affairs and the Europe XXI Foundation's conference "Political Finance: Regulations and Practice" and The International Foundation for Election Systems' (IFES) conference "Campaign Finance: Lessons Learned and Challenges Ahead in Central and Eastern Europe" held in Kyiv, Ukraine, April 29 and April 30, 2002.

Expenditure limits.

There is a widespread belief in the expert community that the current parliamentary elections expenditure limits are too low.² These limits provide one more incentives for the politicians to keep a very significant proportions of their funds undeclared. The share of undeclared funds in the electoral campaign of a number of political parties and individual candidates, according to several research analysts, far exceeded the legal limits. Given the large proportion of undeclared funds, the disclosure rules did not serve their major purpose, which is to inform public about the sources and usage of campaign money. As a result, the official disclosure-based statistics of the 2002 campaign expenses is highly inaccurate and have a very significant underreporting bias.

The expenditure limits envisioned by the current legislation both for political parties and individual candidates running in the single-mandate districts were not in place during previous parliamentary campaigns. The 2001 parliamentary election law stipulates that the size of an election fund of a political party (block) may not exceed 150, 000 times the untaxed minimum monthly wage and the size of an election fund of an individual candidate in a single-member district could not exceed 10, 000 times the untaxed minimums (one minimum equals UAH 17 or USD 3.12). As one of the studies of the 2002 parliamentary campaign shows, four major political parties' real expenditures only on media advertisement were higher than the maximum size of an election fund that

² See the reports by the Agency of Legislative Initiatives (“Electoral Legislation in Ukraine: Problems and Solutions”, April 2002, at www.parliament.org.ua) and by the Europe XXI Foundation (“Political Finance: Attempts to Measure an Iceberg”, April 17, 2002, at www.europexxi.kiev.ua). Both reports are in Ukrainian.

political parties were allowed to have.³ In case of politicians competing in the single-mandate districts, another study reports, principal candidates' operational expenses alone often tended to exceed the size of an election fund allowed for an individual candidate.⁴

Raising the expenditure limits to more realistic levels, if coupled with measures aimed at achieving impartiality of legal treatment of political parties and individual politicians, can facilitate a transition to more transparent system of campaign financing. Politicians may feel less threatened to disclose more realistic data on their campaign expenses and, in the long run, more willing to address the problems of a huge informal sector of economy that currently feeds corrupted political practices.

The concerns have been raised in the course of the 2002 campaign about another types of political finance limits: *time limits*.⁵ The 2001 parliamentary election law stipulates that the official pre-election period starts 90 days prior to the elections. At the same time, political parties and individual politicians are not allowed to engage in active campaigning 50 days before the elections. Given that the politicians start spending on various campaign-related items much earlier, this legal provisions encouraged them to hide campaign contributions and expenses.

³ Coalition of Ukrainian NGOs "Freedom of Choice"/ Transparency International – Ukraine "Public Monitoring of the Electoral Campaign Financing 2002: Final Report" (Kyiv, April 2002).

⁴ Professor Anatoly Romanyuk's presentation of Lviv University's Center for Political Studies' findings at the Institute for Public Affairs and the Europe XXI Foundation's conference "Political Finance: Regulations and Practice", Kyiv, April 29, 2002.

⁵ See Committee of Voters of Ukraine (CVU) Final Election Report, April 2002, at www.cvu.kiev.ua.

Ban on organizational contributions.

The 2001 parliamentary election law allows political parties and individual candidates running in the single-mandate districts to form their electoral funds on the basis of their own resources and individual contributions that should not exceed 1, 000 times the untaxed minimum monthly wage. No corporate donations or any other type of organizational contributions are allowed into the electoral funds. While banning corporate money especially in the single-mandate races has been seen as the way to ensure the egalitarian character of the electoral process, organizational contributions find their ways into the electoral politics.

The problem is especially large-scale in the party-based electoral competition. Although the estimates of real party expenditures vary greatly, some of major political parties spent, according to the analysts, between 4-12 million dollars during the 2002 electoral campaign.⁶ These resources obviously came from organizational donations. Because they were not allowed by the current legislation these contributions, which constitute a lion's share of parties' financial resources, were completely non-transparent and hidden from public eye.

Allowing organizational contributions would facilitate, at least, some degree of transparency and understanding on how organizational interests influence electoral politics. Introducing organizational contributions should not be that controversial if one takes into account that corporate money have already been allowed to enter political process by the 2001 Law "On Political Parties".

⁶ See election reports of Committee of Voters of Ukraine (CVU), April 2002, at www.cvu.kiev.ua; Europe XXI Foundation Report "Political Finance: Attempts to Measure an Iceberg", April 17, 2002, at www.europexxi.kiev.ua

Both the 1992 Law “On Civil Associations”, which regulated the functioning of political parties prior to the adoption of the 2001 law on political parties, and the 2001 law allowed organizational contributions. The 1992 law prohibited political parties to accept contributions only from state bodies and state enterprises; foreign states, companies, organizations, and citizens; enterprises that are more than 20% foreign or state-owned; anonymous donors. The 2001 Law “On Political Parties” lists the same categories of prohibited donors but in the case of enterprises with state or communal ownership does not provide any quantitative indicators regarding the size of the state or communal share. The law also prohibits contributions or donations from other parties that do not belong to the same electoral block and from charity and religious organizations.

Introducing similar clauses in the 2001 election law with the simultaneous amendment of rules on contribution limits to establish the cap on organizational donations would make campaign financing more transparent. It would also help to liquidate one of the existing loopholes in the regulation of organizational contributions to political parties, which is the absence of contribution limits. Although the 1992 Law “On Civil Associations” empowered parliament to determine the amount of maximum contributions to political parties, successive parliaments consistently failed to establish such figures. In the 2001 law “On Political Parties” deputies choose not deal with this issue at all: the law contains no provisions regarding the limits on the size of contributions.

Unwillingness of many incumbent Ukrainian politicians to regulate more explicitly organizational contributions is of major importance for understanding how the system of political finance operates in Ukraine. It is a common belief among the leaders

of oppositional parties that stricter rules for reporting and disclosing financial information would be used by the executive government to undermine the financial stability of opposition parties.⁷ The existing practices of handling political competition by the executive government are often of authoritarian nature. Using various executive agencies (police, tax, fireman, and health inspections) to raid businesses that are suspected in being sympathetic to the opposition parties became a standard practice during the recent years.

Businesses, which contribute to political parties, are very vulnerable to all sorts of government inspections. They are forced to operate in semi-legal way due to the ever-changing system of government regulations of business activity and confiscatory system of various social security payments and taxation. Corporate sponsors thus have strong reasons to press politicians they make contributions to from revealing the sources of their funding.

It is not only businesses of opposition that violate legal norms. Business groups that contribute to the centrist political parties or even “own” some of them prosper in the environment of shadow economy. Parties they control are not interested in more transparent mechanisms of reporting and disclosure either. A detailed disclosure would reveal their dependence on very few corporate sponsors. Revealing even an approximately realistic budget of a day-to-day operational expenses or campaign expenditures could only strengthen their negative image of “money barrels” by providing the analysts with grounds to compare the declared and real expenses.

⁷ Speech of parliamentary deputy Yuri Kliuchkovski, deputy head of People’s Rukh of Ukraine, at the round-table discussion of the law “On Political Parties” in the parliament of Ukraine, Verhovan Rada, 9th July 2001

In-kind contributions.

The 2002 parliamentary campaign once again revealed that the various types of informal arrangements based on the clientelistic and patronage networks continue to dominate political process in Ukraine. The most persistent and serious problem was the use of government resources for partisan political purposes. In the course of the campaign both on the central and local levels pro-government political parties and individual candidates enjoyed preferential treatment on the part of government officials. Informal arrangements on which the various types of in-kind contributions are based, however, characterized not only the interactions between pro-government forces and government officials. Myriad of various transactions between politicians across political spectrum and various societal actors from mass-media, business, or non-government sectors were arranged in the informal manner.

Political advertisement in mass media would not have to be paid for or would be offered at discount rates; private or public facilities would be available for campaign purposes of some politicians and not others; loans for campaign-related expenses would be obtained without filling any papers or going through any bank procedures; etc. Informal social practices, which are partly inherited from the communist period and partly generated by an exceptionally large semi-legal economic sector, permeated all aspects of political process.

Given the impact that government institutions have on setting societal practices in the domain of politics, the governmental abuses of power is the most disturbing phenomenon that has far-reaching implications for the political evolution of the Ukrainian society. Government officials have been systematically pressured to join

and/or to work on political campaigns of pro-government parties or individual candidates; to provide government spaces for campaign purposes of these candidates; to deny public facilities and services or to discriminate in other ways against certain electoral blocs, political parties, and individual candidates. Relying on government personnel (including facility managers, secretaries, and drivers), one of the recent analysis even claims, allowed major pro-government parties to “save” hundreds thousands dollars only in payroll payments.⁸

The governmental abuse of power and much cited use of so-called ‘administrative resources’ in the electoral process are not exclusively the problems of legal regulations. Several legal norms requiring political neutrality on the part of government officials are already in place. For example, as the 2002 IFES Report on “Campaign Finance in Central and Eastern Europe” points out, the 2001 parliamentary election law requires “impartial treatment of parties (blocs) and candidates ... by bodies of state power, bodies of local self-government, their officials and officers, and heads of enterprises, institutions, and organizations”.⁹

These issues are more the problems of enforcement than regulations. Official norms and regulations become consequential only if they can be adequately enforced.

⁸ Committee of Voters of Ukraine’s deputy head Yevhen Radchenko’s presentation of CVU’s findings at the Institute for Public Affairs and the Europe XXI Foundation’s conference “Political Finance: Regulations and Practice”, Kyiv, April 29, 2002.

⁹ Article 10.2.7 of the Law “On Election of the People’s Deputies of Ukraine” cited in Janis Ikstens, Daniel Smilov, and Marcin Walecki “Campaign Finance in Central and Eastern Europe: Lessons Learned and Challenges Ahead” (Washington, D.C.: International Foundation for Electoral Systems, 2002)

Enforcement

In an overview of campaign finance in Central and Eastern Europe the authors of the 2002 IFES Report on “Campaign Finance in Central and Eastern Europe: Lessons Learned and Challenges Ahead” make a general point – ‘Too many rules. Too little enforcement.’¹⁰ Both the 2002 parliamentary campaign and day-to-day party functioning during the last years suggest that that the Ukrainian case follows the same pattern.

Central Electoral Commission of Ukraine is the country’s main enforcement agency in the area of political finance. While the observers tend to agree that CEC followed the formal procedures and performed its duties professionally and responsibly during the preparation period for the recent parliamentary elections¹¹, the concerns are systematically raised about political impartiality of the Commission. These concerns have recently prompted the calls for creation of an independent enforcement agency. While the idea of creating such an agency is appealing, more research has to be done on this subject, which remains insufficiently explored even in comparative literature on political finance.

Introducing changes in how the CEC is formed would be the most effective way to alleviate the concerns about political partisanship in the framework of existing institutions. The current appointment procedure gives the power to nominate and to initiate the dismissal of the CEC members to the president. Parliament has the power to approve or veto the presidential decision. The higher level of political neutrality of the CEC could be achieved if other governmental institutions and judges’ professional associations would have a greater say in how the Central Electoral Commission is

¹⁰ Ibid, p. 10.

¹¹ See Committee of Voters of Ukraine (CVU) report for April 10, 2002; <http://www.cvu.kiev.ua>

formed. The existing term limit of six years for the CEC members is not conducive for fostering political neutrality either.

The 2002 parliamentary campaign also indicated that the legal norms regulating enforcement mechanisms and procedures remain insufficiently specific or elaborated. For example, it is not clear what procedure the CEC has to follow after receiving NGO's reports about campaign finance violation. The case in point is well-publicized report by Coalition of Ukrainian NGOs "Freedom of Choice"/ Transparency International – Ukraine about violations in media advertisement by several political parties. The report was sent to the CEC but has not received so far any official response.

The lack of enforcement characterizes party finance regulations even to a greater extent than campaign finance regulations. Both the 1992 law "On Civil Associations" and the 2001 law "On Political Parties" require political parties to publish their annual budget. Yet neither of documents have any requirements regarding the specific items (shares of membership dues and private contributions, size of contributions, etc.) that should be included into publication or regarding the place of publication. There are no parliamentary resolution or decision of regulatory bodies that would address these issues either. The absence of any specific details regarding the rules for publication of party budgets probably contributes to the general atmosphere of legal defiance that characterizes political parties' attitudes to this legal requirement. No party budgets have been published in major national newspapers during the first post-communist decade.

More basic reasons for ignoring this legal requirement are rooted, however, in the sensitivity of information that publication of party budgets would reveal. Party politicians across political spectrum in Ukraine have strong incentives not to reveal the information about their day-to-day finances and their corporate sponsors. Both pro-government and opposition parties have serious stakes in preserving the existing system of non-transparent party finance.

The prevalence of this specific set of incentives also explains why major party players in parliament were not interested in establishing party finance commission. The 1992 law prescribed that a special commission composed of representatives of all political parties in parliament has to be set up to review the annual financial activity of parties and report the results of a review to the parliament. No such commission has ever been convened. The 1992 law provisions authorizing parliament to establish a maximum size of individual and total annual contributions have also been ignored.

The provisions of the 1992 law that dealt with the government bodies responsible for exercising control over the financial activity of political parties lacked specific details. The legislation designated state tax inspections to be responsible for the control of all issues related to tax payments of political parties and unspecified “financial agencies” to be responsible for the control over size and sources of contributions to political parties. The legislation stipulated that courts establish whether contributions are made in accordance with the law and make decisions about transfer of unlawful contributions to the state budget. As with many other provisions of this law, there were no precedents where these norms would have been used. Other sanctions envisioned by this law –

warning, fine, temporary ban of specific activities, temporary ban of all activities, liquidation - were not explicitly linked to violations of financial rules.

The financial information on political parties, which is collected by tax inspection agencies, is not a domain of public information in Ukraine. State tax inspections in Ukraine are notorious for their secrecy and non-transparency: very little information is disclosed and available for the outside analysis. Analysts' requests for the detailed information are usually ignored and formal guidelines that would oblige tax inspections to disclose such information are non-existent.

The 2001 law "On Political Parties" is even less specific about the details of financial reporting, disclosure and enforcement. The article about financial reporting contains only two clauses: one is the requirement to publish party annual budget and the other obliges parties to "keep their accountancy in accordance with an established order" (Art.17). There is only a mentioning of Ministry of Justice and Central Electoral Committee as agencies responsible for the general enforcement of the norms of the law (Art18). One specific provision that deals with monitoring and enforcement of party funding rules is a clause requiring banks to inform Ministry of Justice about illegal contributions to party accounts. These contributions have to be transferred by political parties to the state budget or are confiscated in accordance with the court order (Art.15).

Unlike the 1992 law, the new law does not provide for the role of tax inspections in monitoring the party finance. The law-makers' desire to avoid provisions that would directly refer to tax inspections as party finance controlling agencies indicates the law-makers' growing concern with politicization of government agencies. The executive agencies charged with various functional tasks have become increasingly used for

promoting political goals of incumbent government during the recent years. The exact wording of party finance clauses in the 2001 law was influenced by the law-makers' desire to limit the involvement of agencies controlled by the executive government into party matters.

Public funding

Both during the 2002 parliamentary campaign and in its aftermath a rather high level of opposition to budget financing of political parties have been voiced in the Ukrainian society. It is not surprising given that unconditional popular support for public funding can not be found in any democracy. The rationale for budget finance in the Ukrainian context, however, should be clearly stated: public funding will help to level the playing field for political parties. It will encourage the development of ideological rather than clientelistic or oligarchic parties. It will decrease the importance of oligarchic financing of political parties and it will allow to avoid the capturing of political parties by special business interests.

Majority of political parties in Ukraine chronically lacks funding. The complete absence of budget financing for day-to-day party expenses and the lack of indirect public funding are among the key factors that make it challenging for political parties to maintain their operations. Scarcity of public money and insufficiency of membership dues make the contributions of corporate sponsors especially critical for sustaining financial vitality of political parties.

Extreme dependence on the corporate donations led to the development of at least two negative tendencies in the Ukrainian party system. First, parties have become

increasingly dependent on special interests and on how successfully they cater to the private needs of their major institutional contributors. Even political parties with traditionally strong ideological or programmatic linkages to the voters – Communist Party of Ukraine, Rukh, Socialist Party of Ukraine – increasingly have to compromise their programmatic standing to ensure financial support. Including business leaders in their electoral lists and lobbying certain pork-barrel bills in the legislature, according to the analysts, are some of the indications of compromises made.

Second, parties, especially smaller ones, have also become much more vulnerable to complete “capturing” by individual business groups. The latter can either “buy” the existent party label or finance the creation of a new one. What one finds under the attractive party label then is an opportunistic party machine that is devoid of any coherent ideological standing and geared to pursue economic interests of oligarchic leadership and to derive political benefits from the situational positioning with regard to major policy issues. In the Ukrainian context, parties that are run by powerful business groups tend to claim their “centrist” orientations thus contributing to further confusion of voters with regard to the meaning of ideological labels.

In advocating the budget financing politicians face a serious dilemma. How to introduce this provision that will be undoubtedly beneficial for the parties’ organizational development but will be also highly unpopular with the voters? In securing media support for this reform it is important to stress that public subsidies for political parties have been adopted in most democratic regimes, being used in 78 percent of Central and Eastern

European countries.¹² The task is to introduce this norm without experiencing the high level of popular backlash. Providing party caucuses in parliament with the additional funding for operational expenses can be one way to avoid political criticism. Engaging authoritative government and societal institutions and, first of all, the Constitutional Court into the efforts to advocate the idea of public funding for political parties is another potential strategy. In the Ukrainian context, public funding constitutes a necessary tool for strengthening the role of political parties in the democratic process.

¹² Janis Iktens, Daniel Smilov, and Marcin Walecki, “Campaign Finance in Central and Eastern Europe: Lessons Learned and Challenges Ahead” (Washington, D.C.: International Foundation for Electoral Systems, 2002), p. 6.